SILVADURAI KRISHNASAMY

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMED J
[CRIMINAL APPEAL NO. 21/1979]
28 JULY 1982

CRIMINAL LAW: *Corruption - Money involved not appropriated by accused for himself - Used to reimburse his mandor's petrol subsidies - Whether defence to an offence under s. 4 (c) Prevention of Corruption Act 1961 - Accused claims overtime payment for his mandor when he had not worked. Sentence - Whether losing job upon conviction is a mitigating factor.*

This was an appeal against the conviction of the appellant who was sentenced to 1 day's imprisonment and fined RM500 in default 2 months' imprisonment for an offence under s. 4(c) of the Prevention of Corruption Act, 1961 (the Laws of Malaysia Act 57). The Public Prosecutor cross-appealed against sentence.

Appellant was a time-keeper employed by the PWD, Mersing, Johore. He was in charge of a number of labourers and a mandor (PW12) who were entitled to overtime pay for work done after 2 p.m. each day and the appellant was authorised to award overtime work.

In August 1976 appellant issued 8 overtime tickets to his labourers and submitted checkrolls for payments which included the name of PW12 allegedly claiming RM112.39 for overtime work done. The claim was passed for the whole checkroll and RM648.57 was handed to appellant for distribution to his workers. Appellant initialled his name on the checkroll as having received payment on behalf of PW12 which PW12 claimed to have not received as he did not work overtime for the month. On calling for explanation by the technical assist. (PW1), appellant gave written explanation that he awarded PW12 overtime payment to cover transport expenses for January - August, 1976. He also admitted signing the checkroll for PW12 and having collected the payments and initialled his name on the time ticket.

In his defence appellant admitted that he filled the time ticket for overtime for PW12 and admitted preparing the checkroll for the said claim.

He further admitted that his workers were not involved in the overtime work and the claim was to pay petrol subsidies to PW12 and himself. He admitted that he signed on behalf of PW12 but paid PW12 at his house. It was alleged that PW12 reported the matter because of old grudges.

Held:

[1] From the evidence, it was very apparent that an offence under s. 4(c) of the Act had been committed by the appellant. The learned President could not arrive at a decision otherwise, than calling for his defence. By this series of admissions, it remained very little that the appellant could say to exculpate himself.

[2] The Court is in agreement with the learned President that the purpose for which appellant prepared the checkroll for overtime claims was to employ them for making false claims. This is a question of fact to be decided by the learned President.

[3] The fact that the appellant had not appropriated the money involved in the claim for himself but used it to reimburse PW12 of petrol subsidies is no defence on a charge under s. 4 (c) of the Act. A personal gain or advantage is not an ingredient to this charge as distinct from the previous two sections, in s. 4(a) & (b) of the Act.

[4] An offence under the Prevention of Corruption Act has always been viewed as a serious offence by the Court. The sentence should reflect the gravity of the offence. A sentence of one day's imprisonment and RM500 fine for such an offence is manifestly inadequate. The fact that the appellant would lose his job in consequence to this conviction is not a mitigating factor.

[Appeal against conviction dismissed. Sentence enhanced to a fine of RM5,000 in default 1 year's imprisonment.]

Cases referred to:
Public Prosecutor v. AG Kyle-Little & Anor. [1971] 1 MLJ 125
Voon Ah Shoon v. Public Prosecutor [1979] 2 MLJ 131

Legislation referred to:
Prevention of Corruption Act 1961, s. 4,(a), (b), (c)

For the appellant - C.C. Aiyathurai
For the respondent - Abdul Wahab b. Said

JUDGMENT

Mohd. Yusoff Mohamed J:

The appellant Silvadurai s/o Krishnasamy was convicted of an offence under s. 4(c) of the Prevention of Corruption Act, 1961 (the Laws of Malaysia Act 1957). He was sentenced to one day's imprisonment and RM500 fine in default with further two months' imprisonment. He now appeals against conviction. There is also a cross-appeal by the Public Prosecutor against sentence.

The facts simply are these:

Appellant was a time-keeper employed by the Public Works Department stationed at Mersing, Johore. He was in charge of a road gang at Endau. A number of labourers and a mandor named Jusoh bin Sulong (PW12) served under him. They were entitled to overtime pay for work done after 2.00 p.m. each day.

Appellant was authorized to award overtime work to his gang. In the month of August, 1976, appellant issued 8 overtime tickets to his gang of labourers (Exhibit P2 AH). These tickets were returned to him at the end of the month for the purpose of preparing checkrolls for payment of overtime work so claimed by each labourer. For the month of August, 1976, appellant submitted checkroll numbered 19/8/76 as at Exhibit P3A and B for overtime claims which he certified as "Pengawas." The checkroll includes the name of PW12 allegedly claiming RM112.39 for over-time work done from 19 August 1976 to 31 August 1976.

The claim was processed by his department and passed.The whole checkroll (Exhibit P3A and B) claimed for overtime payment of RM648.57. Cash for the claim was handed to appellant who distributed payments to each worker and after having done so he signed at the back of the checkroll witnessing such payments.

On 3 October 1976, PW12 enquired from the technical assistant (PW1) about his claim. On checking through the checkroll (Exhibit P3A), PW1 found that the appellant had initialled his name on the checkroll as receiving payment on behalf of PW12. PW1 was familiar with the

appellant's initials and recognised it. On being told this, PW12 then reported to PW1 that he had not received the money from the appellant and neither had he worked overtime for the month of August 1976.

Enquiries were made and appellant was called for explanations. On 19 October 1976, appellant gave written explanations at Exhibit P12 stating that he had awarded PW12 overtime payments in order to cover his (PW12) transport expenses for the months of January to August 1976. He also admitted signing the checkroll for PW12 and collected the payments on his behalf.

PW1 also checked the time ticket at exhibit P2B in respect of PW12's claim and he found that the appellant had initiated his name for each day's overtime work claimed from 19 August 1976 to 31 August 1976. Appellant had also certified and initialled his name on the time ticket on behalf of the overseer in charge.

In his defence, appellant admitted that he filled the time ticket for overtime work for PW12 for August 1976. He also admitted preparing the checkroll for the said claim. He further admitted his gang was not involved in overtime work at Endau bridge, and that they were never involved in any project which required half month's overtime work. He again admitted the claim for overtime work was made for the purpose of paying petrol subsidies to PW12 and himself. He said this practice had been going on in the department for the previous 2 to 3 years.

He said he had given his explanations to the technical assistant (Roads). He admitted that he signed on behalf of PW12 but said that he paid PW12 at his house. But PW12 reported him he alleged, because of old grudges.

From these evidence. it was very apparent that an offence under s. 4(c) of the Act had been committed by the appellant. The learned President could not arrive at a decision otherwise, than calling for his defence. By his series of admissions, it remained very little that the appellant could say to exculpate himself.

Turning to the petition of appeal, the learned defence Counsel has abandoned the grounds at para. (c) in contending that Exhibit 3A and B, the checkroll, was not a document within the meaning of the Act. This is correctly so. *Public Prosecutor v. AG Kyle-Little & Anor.* [1971] 1 MLJ 125 decides that payroll and invoices are in the same category of other document referred to in s. 4(c) of the Act.

On grounds at paragraphs (a), (b) and (f), I am in agreement with the learned President that the treasury instructions have no force of law. The introductory note to the instructions says what it is, that is:

> To serve as a guide to public officers etc..

It is also my view that although the appellant was not delegated with power under the treasury instructions to certify Exhibit P3A & B, but the fact that he did, put the government machinery in motion in processing the claims made by him and in that event, I agree with the learned President, that subsequent verification and certification of those documents by a controlling officer became mere formality. In this regard I would say that Exhibit P3A and B were essentially a basis for payment of the claim without which payment could not be effected.

On ground (d), I also agree with the learned President that the purpose for which appellant prepared the documents at Exhibit P3A and B was to employ them for making false claims. This is a question of fact to be decided by the trial President. See decision in *Voon Ah Shoon v. Public Prosecutor* [1979] 2 MLJ 131 at 132.

In my view, the remaining grounds of appeal have no merit. The fact that appellant had not appropriated the money involved in the claim for himself but used it to reimburse PW12 of petrol subsidies is no defence on a charge under s. 4(c) of the Act. A personal gain or advantage is not an ingredient to this charge as distinct from the previous two sections, in s. 4(a) and 4(b) of the Act. Upon these reasons, I would dismiss this appeal and confirm the conviction.

On cross-appeal by the Public Prosecutor regarding sentence, the learned President admitted in his grounds of Judgment that he was overbearingly lenient in his sentence. An offence under Prevention of Corruption Act has always been viewed as a serious offence by the Court. It is shown in evidence that this criminal practice has been happening in the department for a number of years without detection. The sentence should reflect the gravity of this offence. A sentence of one day's imprisonment and RM500 fine for such an offence is manifestly inadequate. The fact that the appellant would lose his job in consequence to this conviction is not a mitigating factor. I would therefore without altering the findings by the learned President enhance the sentence to a fine of RM5,000 in default one year's imprisonment.

Also found at [1982] CLJ 568